

## **REMARKS**

Claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 are pending in the application. Applicants appreciate the fact that the Action has indicated that claims 26 and 27 are allowed. However, for at least the reasons set forth below, Applicants respectfully submit that the remaining claims are also allowable.

Claims 1, 5, 24 and 28 through 30 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,722,936 to Jacob.

Jacob is directed primarily to the topical application of ascorbic acid to open wounds or to the vaginal area during menses to inactivate toxins known to contribute to Toxic Shock Syndrome. Jacob also discloses that the ascorbic acid adds the secondary benefit of deodorization when used in an amount of at least 100 mg for each carrier or dose (col. 3, lines 13-17 and lines 54-63).

Claim 1 recites a tampon for absorbing body fluids. The tampon has one or more malodor counteractant materials selected from the group consisting of: glycerin, glycerin compound, aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, naturally occurring deodorizing active, citric acid, acetic acid, base, EDTA, ester, masking agent, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, and any mixtures thereof. The one or more malodor counteractant materials is in a liquid form and is present in an amount about 0.01 grams to about 50% of the total weight of the tampon.

It is respectfully maintained that Jacob fails to disclose or suggest a tampon with one or more malodor counteractant materials selected from the claimed Markush group present between about 0.01 grams to about 50% of the total weight of the tampon, as required in claim 1. To the contrary, Jacob only discloses the use of ascorbic acid primarily for its antitoxin effect and secondarily for its deodorization effect. No other compounds are disclosed or even remotely suggested in Jacob as having either an antitoxin effect or a deodorizing effect.

The Action again incorrectly relies on the disclosure of ascorbic acid in Jacob as anticipating claim 1 (see Action at page 2, last paragraph through the top of page 3 and bottom of page 3 through 4). However, Applicants respectfully reiterate that **claim 1 does not recite ascorbic acid, therefore, Jacob cannot anticipate claim 1.**

Dependent claim 5 recites the tampon of claim 1 and further recites that the one or more malodor counteractant materials is present between about 0.1 grams to about 20% of the total weight of the tampon. As noted above with respect to claim 1, Jacob fails to disclose or suggest a tampon with one or more malodor counteractant materials selected from the claimed Markush group present between about 0.01 grams to about 50% of the total weight of the tampon. Therefore, it follows that Jacob fails to disclose or suggest the tampon of claim 1 with one or more malodor counteractant materials is present between about 0.1 grams to about 20% of the total weight of the tampon, as recited in claim 5. Thus, claim 5 is not anticipated by Jacob.

Dependent claim 24 recites a method of deodorizing a vaginal area comprising the step of applying the tampon of claim 1 to the vaginal area. The one or more malodor counteractant materials counteracts malodor in the vaginal area.

As noted above for claim 1, Applicants respectfully reiterate that Jacob fails to disclose or suggest a tampon with one or more malodor counteractant materials selected from the claimed Markush group present between about 0.01 grams to about 50% of the total weight of the tampon. Moreover, it follows that Jacob also fails to disclose or suggest the method recited in claim 24. Therefore, Jacob fails to anticipate claim 24.

Independent claim 28 recites a fibrous absorbent article for absorbing body fluids. The fibrous absorbent article comprises one or more malodor counteractant materials selected from the group consisting of aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, naturally occurring deodorizing active, ester, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface

active polymer, and any mixtures thereof. The one or more malodor counteractant materials is in a liquid form.

Applicants respectfully submit that Jacob fails to disclose or suggest a fibrous absorbent article comprising one or more malodor counteractant materials selected from the claimed Markush group, as recited in claim 28. As noted above, Jacob limits its disclosure to ascorbic acid as an antitoxin and deodorizer. No other deodorizers are disclosed or suggested in Jacob, let alone any of those recited in claim 28. As such, Jacob does not anticipate claim 28.

Overall, it is respectfully submitted that Jacob fails to anticipate claims 1, 5, 24 and 28 through 30. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the §102(b) rejection of these claims.

Claims 1, 3, 6, 7, 10 through 13 and 20 through 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,880,417 to Yabrov et al. (Yabrov).

Yabrov discloses an **anal pad** for preventing soiling of underwear due to undesired anal discharge and for muffling noise due to flatus. A novel feature of the anal pad is the inclusion of glycerin in an absorbing layer for neutralizing odor caused by hydrogen sulfide gas (col. 4, lines 41-44).

Claim 1 is summarized above.

Claim 6 recites a tampon for absorbing body fluids. The tampon has glycerin present between about 0.01 grams to about 50% of the total weight of the tampon. The glycerin is naturally sourced.

Claim 11 recites a tampon for absorbing body fluids. The tampon has thereon a malodor counteractant material comprising: glycerin; and at least one additional malodor counteractant material selected from the group consisting of: aldehyde, natural

oil, solution of soluble natural compound, natural plant and herb extract, naturally occurring deodorizing active, citric acid, base, EDTA, ester, masking agent, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, zeolite, and any mixtures thereof.

Claim 20 recites a tampon for absorbing body fluids. The tampon has a fibrous material suitable for absorbing said body fluids and a liquid glycerin that does not support microbial growth disposed in the tampon to absorb odors associated with the body fluids.

The following criteria must be met to establish a prima facie case of obviousness. First, the prior art relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference, or combination of references, must teach or suggest all of the claimed limitations. The teachings or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not based in on Appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

It is respectfully submitted that nowhere in Yabrov is a tampon disclosed or suggested, let alone one with one or more malodor counteractant materials, or in the claimed amounts, as recited in claims 1, 6, 11 and 20. To the contrary, Yabrov discloses an anal pad with glycerin for the sole purpose of neutralizing odor caused by hydrogen sulfide gas emitted from the anus. The claimed tampon, having one or more malodor counteractants neutralizes, suppresses and/or eliminates odors associated with body fluids emanating from a vagina. As noted in Fig. 3 of the present specification, the claimed tampon is very efficient at eliminating vaginal malodor.

Therefore, due to the deficiencies of Yabrov, it is respectfully submitted that the Action fails to make a prima facie case of obviousness. Specifically, Yabrov does not contain any suggestion or incentive that would have motivated the skilled artisan to modify the anal pad. Moreover, as noted above, Yabrov fails disclose or suggest all of the claimed limitations, namely a tampon, let alone a tampon with one or more malodor counteractant materials in the claimed amounts, as recited in claims 1, 6, 11 and 20.

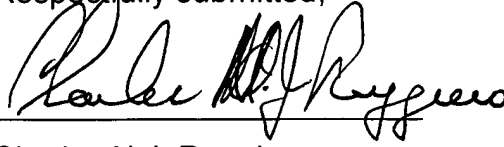
Further, the Action supports Applicant's contention in that the Action acknowledges that Yabrov does not specifically disclose a tampon and Yabrov is silent on the claimed amount of counteractant material present in the tampon (see pages 5 and 6 of the Action). Contrary to the Action's contention that the claimed amounts are an obvious matter of design choice, Applicants respectfully maintain that the use of glycerin in the claimed amounts is not arbitrary. As clearly noted in Figs. 2 and 3, in conjunction with the present specification at pages 18-19, use of malodor counteractant, and in this case glycerin, in the claimed amounts produces a tampon with exceptional malodor counteractant ability.

Applicants respectfully submit that claims 1, 3, 6, 7, 10 through 13 and 20 through 23 are patentably distinguishable over Yabrov for at least the reasons set forth above. Therefore, Applicants respectfully request reconsideration and withdrawal of the §103(a) rejection.

Applicants maintain that claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 are patentably distinguishable over the cited art. As such reconsideration and withdrawal of the above rejections and passage of this application to allowance is respectfully requested.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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